

## **24. DUES AND ORGANIZATIONAL SECURITY**

### **24.11: Dues and Assessments – Payments by Employee**

“The union ... has a fiduciary duty to inform an employee of a delinquency and a pending membership revocation.... Also, ... [the president of the union has] an obligation to inquire on behalf of his members as to the correct policy and to help them in their efforts to remain members.... Additionally, the dues obligation must be enforced uniformly....” **ULP #34-78**

“[T]he ‘right of self-organization,’ of forming, joining, or assisting ‘any labor organization’ (Section 201) must ipso facto include the right of paying dues to ‘any labor organization’.” **ULP #2-79**

### **24.12: Dues and Assessments – Nonpayment**

See **ULPs #2-79 and #44-79.**

### **24.13: Dues and Assessments — Collection**

See **ULP #12-88.**

### **24.131: Dues and Assessments – Collection – Checkoff [See also 43.84.]**

“The two acts [Collective Bargaining for Public Employees Act and National Labor Relations Act] are dissimilar in their provision for dues checkoff.... The Labor Management Relations Act, Section 302(a), prohibits, in general, payments from an employer to a union. However, it provides an exception to that general prohibition by stating, in 302(c): ‘The provisions of this section shall not be applicable ... (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, that the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner’.” **ULP #29-84**

See also **ULP #44-79.**

“The Labor Management Relations Act permits an employer to deduct union dues and to transfer such dues to the union. The Montana Act mandates that such dues be deducted and forwarded to the union upon written authorization by the employee and upon certification by the union. The whole theme of Section 302 is prohibition against employer aid to a union until the circumstances under which it is permitted are identified in Section 302(c). The federal act states what the employer may do; the Montana Act expresses what the employer must do.” **ULP #29-84**

“Unlike wages, hours and other conditions of employment upon which both parties are required to bargain in good faith, but about which neither is required to make a concession, dues deduction is mandated by statute and cannot be altered by the parties unless both agree. To allow an employer to insist on his own form for dues deduction to the same extent that he may insist on his own views with respect to mandatory subjects of bargaining would in effect allow the employer to deny an employee, who otherwise complied with Section 39-31-203 MCA, his statutory right. If the subject of the dues authorization form were a mandatory subject of bargaining, the employer would not have to agree to the use of any form, pursuant to Section 39-31-305 MCA, thereby denying the employee his right to have dues deducted from his pay.” **ULP #29-84.**

“The Association’s dues deductions authorizations form clearly meets all the requirements of Section 39-31-203 MCA and it, in all likelihood, meets the requirements set forth in the Labor Management Relations Act.” **ULP #29-84.**

“[T]he necessary elements for a form are that it indicate the employees understanding of it as a dues deduction authorization, that it authorizes the specific deduction and that it not infringe upon the employees’ right. The Association form in question here meets all three of those requirements.” **ULP #29-84.**

“The legislature did not intend that checkoff be the subject of give and take at the bargaining table, otherwise it would not have included Section 39-31-203 MCA in the Act. Once an employee submits authorization the employer has no discretion. The form itself is a matter for the employee and his union to decide upon just as would be the form used by the union to provide certification to the employer. If any employee objects to the use of a particular form, his recourse lies with his union. It was not intended that the public employer step in and attempt to interfere with internal union affairs.” **ULP #29-84.**

#### **24.132: Dues and Assessments – Collection – Deduction**

“[A] minimum requirement for the validity of provisions for automatic renewal of deduction authorizations is that such provisions be contained in separate forms executed by the employees....” **ULP #2-79**

“Section 39-31-201 MCA is mandatory and therefore obligates the public employer to deduct union dues from an employee’s pay.” **ULP #29-84**

See also **ULP #44-79.**

“Pursuant to Section 39-31-203 MCA, a public employer, upon written authorization of any public employee within a bargaining unit, shall deduct from the pay of that public employee the monthly amount of the dues as certified by

the secretary of the exclusive representative and shall deliver those dues to the Treasurer of the exclusive representative.” **ULP #12-88.**

See also **ULP #29-84.**

**24.14: Dues and Assessments – As Subject of Bargaining [See also 34.84.]**

“Because Section 39-31-201 MCA is mandatory and therefore obligates the public employer to deduct union dues from an employee’s pay, there is no need to go through an analysis, under the Section 39-31-401(5) MCA charge, to determine whether there was a duty to bargain, an offer to bargain or a waiver of the right to bargain over the form to be used for dues deductions for bargaining unit members.” **ULP #29-84**

See also **ULP #44-79.**

“Because Section 39-31-203 MCA is mandatory and therefore obligates the public employer to deduct union dues from an employee’s pay, there is no need to go through an analysis, under the Section 39-31-401(5) MCA charge, to determine whether there was a duty to bargain, an offer to bargain or a waiver of the right to bargain over the form to be used for dues deductions for bargaining unit members. The individual members have the right to have their dues deducted as long as they submit written authorization to the School District. Not only did the duty to bargain not arise on the part of the District, indeed there was no right to bargain. The subject was permissive. If the Association had elected to do so it could have taken advantage of the District’s offer to bargain; however, it was under no duty to do so.” **ULP #29-84.**

“Section 39-31-401(3) MCA was not intended to deny Section 39-31-203 MCA rights to those employees who voluntarily come forward and ask the employer to deduct union dues from their pay. The similarity of the [Labor Management Relations Act and Montana Public Employees Collective Bargaining Act] ends, with respect to checkoff, at their role in implementing union security. Section 39-31-203 MCA goes one step further and requires the employer to checkoff dues regardless of the presence or absence of a union security clause in the parties’ collective bargaining agreement, if the employee gives written authorization.” **ULP #29-84**

**24.15: Dues and Assessments – Authorization**

“[T]he necessary elements for a form are that it indicate the employees’ understanding of it as a dues deduction authorization, that it authorizes the specific deduction and that it not infringe upon the employees’ rights.” **ULP #29-84**

**24.151: Dues and Assessments – Authorization by Employee**

“[A]gency shop fees, i.e., the fees a non-union member of a bargaining unit may be required to pay a union in lieu of dues, may be deducted from his/her pay upon that employee’s written authorization.... The employee’s signing of an individual teaching contract [does not serve] as a legitimate substitute for the signing of the regular deduction form.... Acceptable individual written authorization for the deduction of the representation service fee ... would be obtained by the employee signing the School District’s regular deduction form or a substitute which clearly indicates that the employee understands and authorizes the specific deduction.” **ULP #44-79**

“Section **39-31-203 MCA** states: ‘Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.... Once an employee submits authorization the employer has not discretion.’” **ULP #29-84**

“If an employee objects to the use of a particular form, his recourse lies with his union. It was not intended that the public employer step in and attempt to interfere with internal union affairs.” **ULP #29-84**

In Kalispell Federation of Teachers, **ULP #2-79**, “a contract between the Kalispell Education Association and the School District provided that dues would be made on School District authorization forms. The parties had agreed upon the form to be used. The parties in the instant case have not so agreed.” **ULP #29-84**

“The holding in Kalispell ... was that a dues authorization form be freely entered into and that any conditions placed on it be reasonable.” **ULP #29-84**

“In [Montana Federation of Teachers v.] Lake County [**ULP #44-79**], the district withheld dues without authorization and the Board found that practice to be improper. The Board went on the say any form need only indicate the employee” understanding of the deduction and that it be signed.” **ULP #29-84**

See also **ULP #2-79**.

See **ULPs #29-84 and #12-88**.

**24.152: Authorization by Statute**

See **ULPs #2-79 and #44-79**.

**24.161: Dues and Assessments – Revocation by Employee**

“[S]ince section 203 provides no other condition than that there be a ‘written authorization’ by the public employee before the employer is authorized to deduct union dues from the employee’s paycheck, it would seem that any reasonable conditions voluntarily agreed to by the employee as prerequisite to withdrawing his or her authorization are allowed under the statute.... The gist of these cases from the private sector seems to be this: employees may add any conditions to the exercise of revocation of their deduction authorizations they wish so long as the statutory rights to revoke at certain times are not infringed by employer-union conduct.... There thus appears to be no cause for concern that the teacher’s rights to revoke were infringed [by the automatic renewal agreed to by separate authorization form], particularly in view of the fact that Montana’s section 39-31-203 gives no explicit rights of revocation at certain times.” **ULP #2-79**

See **ULP #12-88**.

**24.17: Dues and Assessments – Use of Dues**

“[T]he payroll deduction of voluntary PAC [political action committee] contributions has virtually no impact on any individual teacher. However, the payroll deductions caused administrative problems for the School District. I find the payroll deduction of voluntary PAC contributions to be a permissive subject of bargaining.” **ULP #9-84**

**24.194: Dues and Assessments – Agency Fees – Assessment of Non-Members**

See **ULPs #17-76, #34-78, and #44-79**.

**24.221: Organizational Security – Union Security Provisions – Agency Shop [See also 43.83.]**

“[E]veryone was on notice that there would be a runoff election. The announcement of the runoff election results was when everyone should have been aware of the lack of notice. To attack the election only after an agency shop clause is agreed to, eight months later, is totally unwarranted. And for this Board to allow the attack would result in a breach of our legislative mandate to prevent strife and unrest in public labor relations.” **UM #5-76**

“The facts of this case show that we are faced with a widespread upheaval as a result of an agency shop clause in a labor agreement.” **UM #5-76**

“The problem perceived by the School District was that it was losing teachers because some teachers did not want to pay union dues. However, that problem, if in fact it was a problem, was caused by the agency shop provision in the parties’ contract. It was not caused by the use of the dues authorization form.” **ULP #29-84**

“The parties agreed during their last negotiations for a successor contract to delete the agency shop provision. The deletion, of course, means there is not union security; no teacher can be forced to pay dues to the Association. It does not mean the School District is relieved of its checkoff obligations under Section 39-31-203 MCA.” **ULP #29-84**

See also **ULPs #34-78 and #44-79**.

“The parties agreed during their last negotiations for a successor contract to delete the agency shop provision. The deletion, of course, means there is not union security; no teacher can be forced to pay dues to the Association. It does not mean the School District is relieved of its checkoff obligations under Section 39-31-203 MCA.” **ULP #29-84**.

**24.222: Organizational Security – Union Security Provisions – Open Shop [See also 43.81.]**

See **ULP #2-79**.

**24.41: Escape Periods – During Term of Contract**

“With no time frame thus set out, the [School] District forms, signed by the six in the fall of 1978 either cancelling deduction authorizations or specifying Kalispell Federation of Teachers’ deductions ... are sufficient to cancel the District’s authority to deduct dues for the Montana Education Association from the paychecks.” **ULP #2-79**

“Courts have generally held that as long as there is an annual escape period, authorization with automatic renewal provisions are valid.” **ULP #29-84**

“The Board of Personnel Appeals has examined the dues deduction authorization form used by the Defendant Montana Education Association which contains a limited window period. The Board has found that form to be consistent with state law in that an employee may voluntarily submit to a dues deduction that is not revocable at will. See **ULP #2-79, Kalispell Federation of Teachers vs. Kalispell Education Association, December 11, 1979** and **ULP #29-84, Sidney Education Association v. Richland County High School District No. 1, August 30, 1985**.” **ULP #12-88**.

“Refusal to comply with an attempted dues deduction revocation outside the window period is neither coercive nor a restraint on the employees Section 39-31-201 MCA rights to engage in, or refrain from, protected concerted activities. See **Electrical Workers (UE) Local 123 vs. Westinghouse Electric Corporation, 345 F Supp. 274, 80 LRRM 3151, affirmed, 478 F.2d 1399, 83 LRRM 2409, CA 3 1973; US Postal Service vs. NLRB, CA 9 1987, 126 LRRM**

2277, 827 F.2d 548; *US Postal Service vs. NLRB*, CA 6 1987, 126 LRRM 3137, 833 F.2d 1195.” ULP #12-88.